

Application No.: 10/073,943
Amendment filed November 9, 2005
Responsive to Office Action dated May 12, 2005

Docket No.: 1817-0122P

REMARKS

The Applicant thanks the Examiner for the thorough consideration given the present application. Claims 1, 3-7 and 22 are currently being prosecuted. The Examiner is respectfully requested to reconsider his rejections in view of the amendments and remarks as set forth below.

Allowable Subject Matter

It is gratefully acknowledged that the Examiner consider the subject matter of claim 22 as being allowable and the subject matter of claims 2-7 as being allowable if rewritten in independent form. Although not conceding the appropriateness of the Examiners objection, claim 1 has been rewritten to include the limitations of claim 2 and claim 7 has been rewritten in independent form. Accordingly, all the claims are now in condition for allowance.

Drawings

The Examiner required that Figures 1-8 should be designated by the legend "Prior Art". In the present amendment the Applicant has amended the drawings to include this legend. Accordingly, this objection is overcome.

Rejection under 35 U.S.C. §102 (d)

The Examiner rejected claims 1, 8-16 and 19-21 as being rejected under 35 U.S.C. 102(d) as being barred by Applicant's own Spanish Patent ES 2 156 525. Claims 1, 8-16 and 19-21 were also rejected under 35 U.S.C. 102(d) as being barred by Applicant's own European Patent EP 1 172 500 A1. These rejections are respectfully traversed.

First, in regard to the rejection over the European Patent, the Examiner has relied on the publication date of January 16, 2002 as being prior to the effective filing date of the present application. Applicant submits that the Examiner has misstated the rule in this regard. As noted

Application No.: 10/073,943
Amendment filed November 9, 2005
Responsive to Office Action dated May 12, 2005

Docket No.: 1817-0122P

in MPEP §2135.01 III B, it is not possible to rely on a publication date for this rejection, but only a patent grant date. Thus, this rejection is clearly inappropriate.

In regard to the rejection over the Spanish patent, the Applicant disagrees with the Examiner's application of the rule. MPEP § 2135.01 IV describes the situation. The Examiner states that the claims need not be identical. Applicant does not disagree with this. However, this section of the MPEP makes it clear that the previous patent must support the claims of the present application. The Applicant's previous arguments relate to the fact that the claims of the present application would not be supported by the Spanish Patent.

Although the Applicant believes that the Examiner's rejections are inappropriate, in order to further the prosecution, Applicant has rewritten claim 1 to include the limitations of claim 2 and rewritten claim 7 to include the limitations of original claim 1. In view of the Examiner's previous statements, claims 1, 3-7 and 22 are therefore allowable.

Information Disclosure Statement

The Examiner has acknowledged the Information Disclosure Statement filed on February 23, 2005. An initialed copy of the PTO 1449 has been received from the Examiner. No further action is necessary at this time.

Conclusion

In view of the above remarks and the Examiner's previous indication of allowability, it is believed that the claims are now allowable. In view of this, reconsideration of the rejections and allowance of all the claims is respectfully requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Robert F. Gnuse (Reg. No. 27,295)

Application No.: 10/073,943
Amendment filed November 9, 2005
Responsive to Office Action dated May 12, 2005

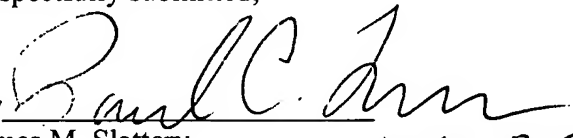
Docket No.: 1817-0122P

at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

Date: November 9, 2005

By 
James M. Slattery
for Registration No.: 28,380 #43,368
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Rd
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attachments: Replacement Figs. 1-8

Application No.: 10/073,943
Amendment filed November 9, 2005
Responsive to Office Action dated May 12, 2005

Docket No.: 1817-0122P

Amendments to the Drawings:

The attached sheet of drawings includes a change to Fig. 1-8. The words "Prior Art" have been added to these sheets, which replaces the previously filed sheets including Figs. 1-8.

Attachment: Replacement Sheets (Figs 1-8)